
NO. PD-0593-20

IN THE COURT OF CRIMINAL APPEALS

FILED
COURT OF CRIMINAL APPEALS
1/20/2021
DEANA WILLIAMSON, CLERK

OF

THE STATE OF TEXAS

**JOSE CESAR SANCHEZ,
Appellant**

v.

**STATE OF TEXAS,
Appellee**

**On Appellant's Petition for Discretionary Review from the
11th Court of Appeals, Eastland, Texas
No. 11-17-00254-CR**

**On appeal from the 358th Judicial District Court
of Ector County, Texas
Cause No. D-16-1836-CR**

STATE'S BRIEF ON PETITION FOR DISCRETIONARY REVIEW

Michael Bloch
Assistant District Attorney
Ector County District Attorney's Office

**Oral Argument is
Not Requested**

Ector County Courthouse
300 N. Grant, Room 305
Odessa, Texas 79761
(432) 498-4230 Phone
(432) 498-4293 Fax
michael.bloch@ectorcountytexas.gov
Attorney for the State of Texas

Identity of Parties and Counsel

APPELLANT'S COUNSEL AT TRIAL

Tony Chavez and Adrian Chaves
121 E. 4th St.
Odessa, Texas 79761

STATE'S COUNSEL AT TRIAL

William Prasher and Julie Prentice
300 N. Grant Room 305
Odessa, Texas 79761

APPELLANT'S COUNSEL ON DIRECT APPEAL:

Michele Greene
2833 Wildwood
Odessa, Texas 79761

APPELLANT'S COUNSEL ON PDR

Aaron Spolin
Spolin Law P.C.,
7600 Chevy Chase Drive, Suite 300
Austin, TX 78752,

ATTORNEY FOR THE STATE ON DIRECT APPEAL AND PDR

Michael Bloch
Ector County Courthouse
300 N. Grant, Room 305
Odessa, Texas 79761

TRIAL COURT:

Hon. W. Tracy Trotter
358th District Court
300 N. Grant
Odessa, Texas 79761

Table of Contents

Identification of Parties and Counsel	2
Index of Authorities	4
Summary of the Argument.....	6
Argument	
I The trial court did not abuse its discretion in denying Appellant’s request to withdraw his jury waiver	7
A. Appellant questioned the validity of the jury waiver during the June 29, 2017 pretrial hearing, and the trial court ruled it valid; however, at no point did Appellant request permission to withdraw the waiver on that same day	9
B. Appellant first requested to withdraw the jury waiver on August 7, 2017, immediately before trial; the rebuttals given to Appellant’s claim of no adverse consequences were sufficient to justify the trial’s ruling.	11
Conclusion and Prayer	16
Certificate of Service	17
Certificate of Compliance	17

Index of Authorities

Cases

<i>Green v. State</i> , 36 S.W.3d 211 (Tex. App.—Houston [14th Dist.] 2001).....	7
<i>Hobbs v. State</i> , 298 S.W.3d 193 (Tex. Crim. App. 2009)	7, 13, 14
<i>Martinez v. State</i> , 449 S.W.3d 193, 200 (Tex. App.—Houston [1st Dist.] 2014, pet., ref'd).....	11
<i>Marquez v. State</i> , 921 S.W.2d 217 (Tex. Crim. App. 1996)	6, 7, 8, 12, 15, 16
<i>Martinez v. State</i> , 449 S.W.3d 193, 200 (Tex. App.—Houston [1st Dist.] 2014, pet., ref'd).....	11
<i>Sanchez v. State</i> , No. 11-17-00254-CR, 2020 Tex. App. LEXIS 4165, at *6 (Tex. App.—Eastland May 29, 2020)	9
<i>Smith v. State</i> , 363 S.W.3d 761 (Tex. App.—Austin 2012, pet. ref'd)	14
<i>Talbert v. State</i> , 529 S.W.3d 212, 215 (Tex. App.—Houston [14th Dist.] 2017)...	14
<i>Taylor v. State</i> , 255 S.W.3d 399, 401 (Tex. App.—Texarkana 2008, pet. ref'd)	13
<i>Trimble v. Tex. Dep't. of Prot. & Reg. Serv.</i> , 981 S.W.2d 211, 214-15 (Tex. App.-- Houston [14th Dist.] 1998, no pet.)	8
<i>Wheatfall v. State</i> , 882 S.W.2d 829 (Tex. Crim. App. 1994)	8

Rules

Tex. R. App. P. 33.1(a)	15
Tex. R. App. P. 38 (i).....	14

NO. PD-0593-20

IN THE COURT OF CRIMINAL APPEALS
OF
THE STATE OF TEXAS

JOSE CESAR SANCHEZ,
Appellant

v.

STATE OF TEXAS,
Appellee

**On Appellant's Petition for Discretionary Review from the 11th Court of
Appeals, Eastland, Texas
No. 11-17-00254-CR**

**On appeal from the 358th Judicial District Court
of Ector County, Texas
Cause No. D-16-1836-CR**

STATE'S APPELLATE BRIEF

TO THE HONORABLE JUSTICES OF SAID COURT:

COMES NOW, Appellee, the **STATE OF TEXAS**, by and through its District Attorney, R.N. (Bobby) Bland and Assistant District Attorney Michael Bloch and presents for receipt its Appellate Brief in the above-styled and numbered cause of action.

Summary of Argument

The trial court did not abuse its discretion in denying Appellant's request to withdraw his jury waiver. Contrary to his assertions, Appellant did not attempt to withdraw his waiver on the same day he signed it, June 29, 2017. Rather, the June 29 hearing related only to his challenge to the validity of the waiver, i.e., whether it was entered knowingly, voluntarily, and intelligently. Appellant did not actually request the withdrawal of the waiver or argue any of the factors promulgated by *Marquez* until immediately prior to trial on August 7, 2017. The State's and trial court's rebuttals to Appellant's claim of lack of consequences detailed several delays in trying the case—some attributable to Appellant – and hardships to the child sexual assault victim and concerns about apathy among other witness. These circumstances involving interference with the trial court's business, inconvenience to witnesses, unnecessary delay and prejudice – coupled with the fact that Appellant first sought to withdraw the waiver on the day of trial – are, in the State's view, sufficient to show that the trial court's ruling in this regard was not outside the zone of reasonable disagreement.

Argument

I.

The trial court did not abuse its discretion in denying Appellant's request to withdraw his jury waiver

Appellant contends that the trial court abused its discretion in refusing to allow him to withdraw a jury waiver he had signed on June 29, 2017. 1SCR Vol 1, p. 10. According to Appellant's view of the sequence of events, "it is uncontroverted that the execution of the waiver and the request to withdraw were on the very same day." Appellant's Br. at 8. As will be further discussed below, the State does not agree with this assessment.

To protect the "inviolable" nature of the right to jury trial, the trial court should ordinarily "permit withdrawal of the waiver so long as it is in good faith and there are no adverse consequences." *Marquez v. State*, 921 S.W.2d 217 (Tex. Crim. App. 1996); *Green v. State*, 36 S.W.3d 211 (Tex. App.—Houston [14th Dist.] 2001). However, the burden to show an absence of adverse consequences rests not with the State but with the defendant. *See Hobbs v. State*, 298 S.W.3d 193 (Tex. Crim. App. 2009); *Marquez*, 921 S.W.2d at 223. "While a defendant begins with an absolute right to a jury trial, once that right has been waived, the defendant who seeks to withdraw that waiver occupies the position of a party seeking to

change the status quo." *Marquez*, 921 S.W.2d at 223. The defendant who seeks to change the status quo by withdrawing her waiver "must establish, on the record, that [his] request to withdraw [his] jury waiver has been made sufficiently in advance of trial such that granting [his] request will not: (1) interfere with the orderly administration of the business of the court, (2) result in unnecessary delay or inconvenience to witnesses, or (3) prejudice the State." *Hobbs*, 298 S.W.3d at 197-98. "If the defendant's claims are rebutted by the State, the trial court, or the record itself, the trial judge does not abuse his discretion in refusing to allow the withdrawal of the waiver." *Id.* at 198. Moreover, "[a] silent record does not mean that the state, witnesses, and trial court did not in fact suffer prejudice; it merely means that proof was not offered on the issue." *Marquez*, 921 S.W.2d at 223 n.7. The grant or denial of a request to withdraw a jury waiver falls within the trial court's discretion in controlling the business of the court. *Marquez v. State*, 921 S.W.2d 217, 223 (Tex. Crim. App. 1996) (citing *Wheatfall v. State*, 882 S.W.2d 829 (Tex. Crim. App. 1994)). This Court should not reverse the trial court's denial of a request to withdraw a waiver of jury trial unless it finds an abuse of discretion. *Marquez*, 921 S.W.2d at 221-22; *Trimble v. Tex. Dep't. of Prot. & Reg. Serv.*, 981 S.W.2d 211, 214-15 (Tex. App.--Houston [14th Dist.] 1998, no pet.).

A. Appellant questioned the validity of the jury waiver during the June 29, 2017 pretrial hearing, and the trial court ruled it valid; however, at no point did Appellant request permission to withdraw the waiver on that same day

In his complaints regarding his inability to obtain a jury trial, Appellant first points to his jury waiver, which was executed on June 29, 2017. 1SCR 10. He then points to a June 29, 2017 pre-trial hearing that was held immediately before a scheduled plea hearing in his case. *See* RR Vol. 4. Throughout his brief, Appellant repeatedly claims that *during this hearing* he requested to withdraw his jury waiver, seeking to “withdraw his waiver on the same day it was executed.” Appellant’s Br. at 10; *See* 1SCR Vol 1, p. 10 (waiver was signed June 29, 2017). The Court of Appeals’ opinion somewhat agreed with this description of the events: “Appellant effectively asked to withdraw his waiver on the day of the plea hearing.” *Sanchez v. State*, No. 11-17-00254-CR, 2020 Tex. App. LEXIS 4165, at *6 (Tex. App.—Eastland May 29, 2020, pet. granted) (unpublished).

The State disagrees with both of these characterizations of what actually occurred at that hearing. From the beginning of the June 29 hearing, the subject of the proceedings went no further than an examination as to whether Appellant, who required the services of an interpreter, understood the rights he was relinquishing when he signed the jury waiver, and the document’s enforceability as a valid waiver. RR Vol. 4, pp. 4, 5, 7, 8. It would seem that if the trial court had accepted

Appellant's invitation to find that he had not sufficiently understood what he had signed, the waiver would have been invalid and there would have been nothing *to* withdraw.

The trial court implicitly found that the waiver was valid. *Id.* at 13. Appellant appeared to change his mind regarding his acceptance of the State's plea offer, but even after the trial court's finding that the waiver was valid, at the June 29 hearing neither Appellant nor his attorney articulated a request to withdraw his now-validated jury waiver or ask for a jury trial. *See* RR Vol 4, p. 1-9, 15.

Appellant contends that "[a]t no point prior to the bench trial did the Court actually consider whether Appellant was entitled to withdraw the waiver."

Appellant's Br. at 8. This is true, and appropriate, in the case of this June 29 hearing because the trial court was under no obligation to consider a request for withdrawal of the waiver that was never made. Certainly, Appellant made no mention at this hearing of inconveniencing witnesses, disrupting the orderly administration of the court, prejudice to the State, or such other arguments that form the basis of Appellant's brief now before this Court. RR Vol 4, p. 1-9, 15.

The question of whether the waiver was made knowingly, voluntarily, and intelligently is entirely separate from the question of whether Appellant should be allowed to withdraw the waiver due to external factors such as those outlined in

Marquez. Cf: Martinez v. State, 449 S.W.3d 193, 200 (Tex. App.—Houston [1st Dist.] 2014, pet., ref’d). The latter question was not addressed at this June 29 hearing, which belies the narrative that “[w]hat is remarkable in the instant case is that Appellant first sought to withdraw his waiver at most hours after it was executed on June 29, 2017.” Appellant’s Br. at 10.

B. Appellant first requested to withdraw the jury waiver on August 7, 2017, immediately before trial; the trial court and States’ rebuttals given to Appellant’s claim of no adverse consequences were sufficient to justify the trial court’s ruling

Appellant filed an August 2, 2017 motion requesting that the case be placed back on the jury docket and, on August 7, urged such immediately prior to trial. CR Vol 1, p. 65; RR Vol. 5, pp. 8-13, 15-27. The written motion focused again upon confusion regarding the waiver, but Appellant’s courtroom arguments clearly request withdrawal of the waiver on grounds including lack of “adverse consequences” or “inconvenience.” *Id.* The trial court denied the request based upon the State’s refusal to agree to this relief, as well as its own assessment that the waiver was valid and skepticism of Appellant’s claims regarding lack of prejudice to the State. *Id.* at 16-26.

After the parties rested but prior to final arguments, the trial court stated that it was going to revisit its earlier ruling regarding Appellant’s request to withdraw

his jury waiver. RR Vol 5, pp. 112-113. The trial court then found that to grant such would interfere with the orderly administration of the court; specifically noting that

It has been set for trial -- or had been set for trial before Mr. Sanchez had executed this jury waiver on four previous occasions. In fact, the second time this case was set for trial, which was to be tried on April 26th, the week before Mr. Sanchez had requested that his attorney be permitted to withdraw, even though his attorney had been appointed since December of '16 on the basis that he couldn't communicate with his attorney, and that was Ms. Laura Carpenter. So the Court delayed the trial and permitted Mr. Sanchez to have other court appointed counsel, and that is what we arrived at today.

Id. at 113-114¹. The trial court then asked the State to comment on unnecessary delay or inconvenience to witnesses. *Id.* at 114. The State responded:

Your Honor, as it came out in testimony from [victim], I have met with her at least six or more times. One of the reasons I have had to meet with her multiple, multiple times is this case has been continuously reset and reset. And I would like on the record that that is not a reflection -- saying something poorly about these defense counsels. They have done an imminent job, both in this case and all the other cases that I have ever, in my experience dealing with. They are excellent attorneys and they have represented their client very well. But because of the actions of their client, which I don't think impugns them in any way, shape or form, this case has been delayed and delayed and delayed. I have had to bring in all the witnesses you saw today, plus others that I chose not to call, and we had to meet with them over and over again. And quite honestly, Your Honor, the

¹ Apparently, the trial court mistakenly considered “sufficiently ready in advance of trial” as a separate factor for consideration under *Marquez*; however, it is clear what the Court’s intent was in making these findings and its decision. RR Vol. 5, p. 113.

victim in this case was very reluctant to go forward. As you could tell from her testimony, she is very nervous, she is very skittish. She is scared. She is scared of the process. She is scared of the defendant. I think she might even be a little scared of me. The reality is I had to promise her that I would do everything in my power to obtain a plea in this case just to get her to agree to come down here and testify. And when we are talking about harm or prejudice to the State's case, every single time a case is continued or reset, for whatever reason, there is a chance that the 13th time a witness tells the story, they just don't care anymore. They refuse to come in and they refuse to cooperate. That's the potential harm and/or prejudice that the State is going to have, in any criminal case. And in cases of sexual assault where you are dealing with young children who are talking about the very individual who they believe -- well, may not be their biological father, but for all practical purposes was their father, makes it even more difficult.

5 RR 115. The trial court then found that Appellant had not met his burden to show entitlement to withdrawal of his waiver, and again denied his request. *Id.* at 115-116. "If the State, the record itself, or the trial court rebuts the defendant's claim of no adverse consequences, the trial court does not abuse its discretion in denying the motion to withdraw the waiver of jury trial." *Taylor v. State*, 255 S.W.3d 399, 401 (Tex. App.—Texarkana 2008, pet. ref'd); *see also Hobbs*, 298 S.W.3d at 198 (holding same); *Marquez*, 921 S.W.2d at 223 (holding same).

Taking umbrage at the trial court's "revisiting" of the ruling, Appellant asserts in his PDR that "[a]s both parties had already rested and closed, the matter was effectively moot and the trial court simply appeared to go through the motions to shield its decision from appellate review." *Id.* at 7-8. He does not, however, cite

to any authority undermining the integrity of such revisiting of the ruling, nor does he explain how doing so prior to verdict would be subject to the mootness doctrine. *See* Tex. R. App. P. Rule 38 (i).

In any event, as noted above, Appellant did not actually attempt to withdraw the waiver until August 7, the day of trial. The above rebuttals detailed several delays in trying the case—some attributable to Appellant – and hardships to the child sexual assault victim and concerns about reticence among other witnesses. These circumstances involving interference with the trial court’s business, inconvenience to witnesses, unnecessary delay and prejudice – coupled with the fact that Appellant first sought to withdraw the waiver on the day of trial – are, in the State’s view, sufficient to show that the trial court’s ruling in this regard was not outside the zone of reasonable disagreement. *See, e.g., Hobbs v. State*, 298 S.W.3d 193, 197 (Tex. Crim. App. 2009); *Smith v. State*, 363 S.W.3d 761 (Tex. App.—Austin 2012, pet. ref’d). *Talbert v. State*, 529 S.W.3d 212, 215 (Tex. App.—Houston [14th Dist.] 2017, pet. ref’d).

Appellant argues again and again that he has fulfilled his burden to show lack of consequences because he sought to withdraw his waiver “hours” after it was originally signed on June 29, 2017. *See, e.g.,* Appellant Br. at 11-12. As previously noted, the State’s position is that the hearing held on that same date was only to determine the validity of the waiver, and did not involve any request to

withdraw it. Even if this Court disagrees with that characterization, it is indisputable that Appellant’s argument at the June 29 hearing related only to whether the waiver was legally executed knowingly and intelligently, and the trial court only ruled on that basis.² RR Vol 4, p. 1-9, 15. Appellant’s later arguments seeking withdrawal, including lack of interference with the trial court’s business, lack of inconvenience to witnesses, lack of delay and lack of prejudice were not first advanced until the day of trial – August 7, 2017 – and it was only at that point that (1) the trial court was able to ascertain those bases of his request to withdraw, and afforded the opportunity to rule on it; and (2) the State had the opportunity to respond to these arguments. RR Vol. 5, pp. 8-13, 15-27. In short, the *Marquez* factors did not come into play “mere hours after [the waiver] was executed” on June 29; instead, they came into play when first raised just before the trial began on August 7. *Id.* Appellant’s arguments attempting to apply the *Marquez* factors to the proceedings *as they stood on June 29* are therefore misplaced. See Tex. R. App. P. 33.1(a).

² Compare this with Appellant’s versions of the events: “Simply stated, there was absolutely no reason not to permit Appellant to withdraw his waiver mere hours after it was executed. Again, Appellant initially sought to withdraw his waiver at most hours (and certainly on the very same day) it was executed. (RR 4:4,8). In these circumstances, the withdrawal would not have interfered with the orderly administration of the business of the course; no witnesses would have been inconvenienced; there would have been no unnecessary delay; and there was absolutely no prejudice (or conceivable prejudice) to the State.” Appellant’s Br. at 11-12.

The trial court reasonably concluded that Appellant's request to withdraw his jury waiver would, if granted, interfere with the orderly administration of court business, cause unnecessary delay or inconvenience to witnesses, or prejudice the State. *See Marquez*, 921 S.W.2d at 223.

For these reasons, Appellant's point of error should be overruled.

Conclusion and Prayer

The State of Texas prays this Court affirm the decision of the 11th Court of Appeals in this case.

Respectfully Submitted,

Michael Bloch

Assistant District Attorney

Ector County District Attorney's Office

BY: /s/ Michael Bloch

Michael Bloch

Assistant District Attorney

SBN 24009906

Ector County Courthouse

300 N. Grant, Room 305

Odessa, Texas 79761

(432) 498-4230 Phone

(432) 498-4293 Fax

michael.bloch@ectorcountytexas.gov

Attorney for the State of Texas

Certificate of Service

I certify that on this 19th day of January, 2021, a copy of the foregoing State's Brief on Petition for Discretionary Review was served via efile.texas upon Aaron Spolin, attorney for Appellant.

/s/ Michael Bloch

Michael Bloch

Certificate of Compliance

I certify that the foregoing brief consists of 3,492 words and is typed in 14-point Times New Roman font.

/s/ Michael Bloch

Michael Bloch

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Michael Bloch
Bar No. 24009906
michael.bloch@ectorcountytexas.gov
Envelope ID: 49819922
Status as of 1/20/2021 9:06 AM CST

Associated Case Party: JoseCSanchez, TDCJ # 02154434

Name	BarNumber	Email	TimestampSubmitted	Status
Dionne Parker		admin@spolinlaw.com	1/19/2021 1:17:00 PM	SENT

Associated Case Party: The State of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Michael Bloch	24009906	michael.bloch@ectorcountytexas.gov	1/19/2021 1:17:00 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
stacey soule		stacey.soule@spa.texas.gov	1/19/2021 1:17:00 PM	SENT